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5 Attorneys for Defendants Bart Y. Lau, Trustee; Jindart Lau, Trustee; Benjamin C.K. Lau,
 6 Trustee; Francis T.H. Lau, Trustee; Joanne M.H. Lau, Trustee; Gary T.Y. Lau, Trustee;
 Linda C. Lau, Trustee; Lawrence Y.K. Lau, Trustee; Amy L. Ko Lau, Trustee; Sabina
 W.M., Trustee of The Sabina Wai Mai Lau Revocable Trust

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UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 LES JANKEY, an individual; and } Case No. CV 09-2056 WDB
 12 DISABILITY RIGHTS, }
 12 ENFORCEMENT, EDUCATION, }
 13 SERVICES; HELPING YOU HELP }
 13 OTHERS; a California public benefit }
 14 corporation, }
 14 Plaintiffs, }
 15 vs. }
 16 BART Y. LAU, TRUSTEE; JINDART }
 17 LAU, TRUSTEE; BENJAMIN C.K. LAU, }
 17 TRUSTEE; FRANCIS T.H. LAU, }
 18 TRUSTEE; JOANNE M.H. LAU, }
 18 TRUSTEE; GARY T.Y. LAU, TRUSTEE; }
 19 LINDA C. LAU, TRUSTEE; LAWRENCE }
 20 Y.K. LAU, TRUSTEE; AMY L. KO LAU, }
 20 TRUSTEE; SABINA W.M., TRUSTEE }
 21 OF THE SABINA WAI MAI LAU }
 21 REVOCABLE TRUST DATED JUNE 20, }
 21 1995, a.k.a. AMISHA INDIAN CUISINE, }
 22 Defendants. }

Complaint Filed: May 11, 2009

24 COMES NOW, Defendants Bart Y. Lau, Trustee; Jindart Lau, Trustee; Benjamin
 25 C.K. Lau, Trustee; Francis T.H. Lau, Trustee; Joanne M.H. Lau, Trustee; Gary T.Y. Lau,
 26 Trustee; Linda C. Lau, Trustee; Lawrence Y.K. Lau, Trustee; Amy L. Ko Lau, Trustee;
 27 Sabina W.M., Trustee of The Sabina Wai Mai Lau Revocable Trust (collectively
 28 "Defendants"), and in responding to plaintiffs' ("Plaintiffs") complaint herein, admit, deny

1 and allege as follows:

2 1. In response to Paragraph 1, Defendants lack sufficient information and belief
 3 to either admit or deny the allegations contained within this paragraph, and based upon
 4 said lack of information and belief, deny the allegations contained therein.

5 2. In response to Paragraph 2, Defendants deny the allegations contained within
 6 this paragraph.

7 3. In response to Paragraph 3, Defendants admits the allegations contained
 8 within this paragraph.

9 4. In response to Paragraph 4, Defendants admit the allegations contained
 10 within this paragraph.

11 5. In response to Paragraph 5, Defendants lack sufficient information and belief
 12 to either admit or deny the allegations contained within this paragraph, and based upon
 13 said lack of information and belief, deny the allegations contained therein.

14 6. In response to Paragraph 6, Defendants lack sufficient information and belief
 15 to either admit or deny the allegations contained within this paragraph, and based upon
 16 said lack of information and belief, deny the allegations contained therein.

17 7. In response to Paragraph 7, Defendants lack sufficient information and belief
 18 to either admit or deny the allegations contained within this paragraph, and based upon
 19 said lack of information and belief, deny the allegations contained therein.

20 8. In response to Paragraph 8, Defendants admit only that they have an
 21 ownership interest in said property. In all other respects, Defendants deny the allegations
 22 contained within this paragraph.

23 9. In response to Paragraph 9, Defendants admit only that they have an
 24 ownership interest in said property. In all other respects, Defendants deny the allegations
 25 contained within this paragraph.

26 10. In response to Paragraph 10, Defendants lack sufficient information and
 27 belief to either admit or deny the allegations contained within this paragraph, and based
 28 upon said lack of information and belief, deny the allegations contained therein.

1 11. In response to Paragraph 11, Defendants admit that Amisha Indian Cuisine is
 2 a tenant at 1924 Irving Street, San Francisco, California. In all other respects, Defendants
 3 deny the allegations contained within this paragraph.

4 12. In response to Paragraph 12, Defendants lack sufficient information and
 5 belief to either admit or deny the allegations contained within this paragraph, and based
 6 upon said lack of information and belief, deny the allegations contained therein.

7 13. In response to Paragraph 13, Defendants deny the allegations contained
 8 within this paragraph.

9 14. In response to Paragraph 14, Defendants lack sufficient information and
 10 belief to either admit or deny the allegations contained within this paragraph, and based
 11 upon said lack of information and belief, deny the allegations contained therein.

12 15. In response to Paragraph 15, Defendants lack sufficient information and
 13 belief to either admit or deny the allegations contained within this paragraph, and based
 14 upon said lack of information and belief, deny the allegations contained therein.

15 16. In response to Paragraph 16, Defendants lack sufficient information and
 16 belief to either admit or deny the allegations contained within this paragraph, and based
 17 upon said lack of information and belief, deny the allegations contained therein.

18 17. In response to Paragraph 17, Defendants lack sufficient information and
 19 belief to either admit or deny the allegations contained within this paragraph, and based
 20 upon said lack of information and belief, deny the allegations contained therein.

21 18. In response to Paragraph 18, Defendants lack sufficient information and
 22 belief to either admit or deny the allegations contained within this paragraph, and based
 23 upon said lack of information and belief, deny the allegations contained therein.

24 19. In response to Paragraph 19, Defendants lack sufficient information and
 25 belief to either admit or deny the allegations contained within this paragraph, and based
 26 upon said lack of information and belief, deny the allegations contained therein.

27 20. In response to Paragraph 20, Defendants lack sufficient information and
 28 belief to either admit or deny the allegations contained within this paragraph, and based

1 upon said lack of information and belief, deny the allegations contained therein.

2 21. In response to Paragraph 21, Defendants lack sufficient information and
3 belief to either admit or deny the allegations contained within this paragraph, and based
4 upon said lack of information and belief, deny the allegations contained therein.

5 22. In response to Paragraph 22, Defendants lack sufficient information and
6 belief to either admit or deny the allegations contained within this paragraph, and based
7 upon said lack of information and belief, deny the allegations contained therein.

8 23. In response to Paragraph 23, Defendants deny the allegations contained
9 within this paragraph.

10 24. In response to Paragraph 24, Defendants deny the allegations contained
11 within this paragraph.

12 25. In response to Paragraph 25, Defendants deny the allegations contained
13 within this paragraph.

14 26. In response to Paragraph 26, Defendants deny the allegations contained
15 within this paragraph.

16 27. In response to Paragraph 27, Defendants deny the allegations contained
17 within this paragraph.

18 28. In response to Paragraph 28, Defendants lack sufficient information and
19 belief to either admit or deny the allegations contained within this paragraph, and based
20 upon said lack of information and belief, deny the allegations contained therein.

21 29. In response to Paragraph 29, Defendants deny the allegations contained
22 within this paragraph.

23 30. In response to Paragraph 30, Defendants deny the allegations contained
24 within this paragraph.

25 31. In response to Paragraph 31, Defendants deny the allegations contained
26 within this paragraph.

27 32. In response to Paragraph 32, Defendants deny they personally operate the
28 restaurant. As to the remaining allegations contained within this paragraph, Defendants

1 lack sufficient information and belief to either admit or deny the allegations contained
 2 within this paragraph, and based upon said lack of information and belief, deny the
 3 allegations contained therein.

4 33. In response to Paragraph 33, Defendants lack sufficient information and
 5 belief to either admit or deny the allegations contained within this paragraph, and based
 6 upon said lack of information and belief, deny the allegations contained therein.

7 34. In response to Paragraph 34, Defendants deny the allegations contained
 8 within this paragraph.

9 35. In response to Paragraph 35, Defendants deny the allegations contained
 10 within this paragraph.

11 36. In response to Paragraph 36, Defendants deny the allegations contained
 12 within this paragraph.

13 37. In response to Paragraph 37, Defendants deny the allegations contained
 14 within this paragraph.

15 38. In response to Paragraph 38, Defendants deny the allegations contained
 16 within this paragraph.

17 39. In response to Paragraph 39, Defendants lack sufficient information and
 18 belief to either admit or deny the allegations contained within this paragraph, and based
 19 upon said lack of information and belief, deny the allegations contained therein.

20 40. In response to Paragraph 40, Defendants replead and incorporate by
 21 reference, as if fully set forth again herein, the responses contained in Paragraphs 1
 22 through 39 of this answer.

23 41. In response to Paragraph 41, Defendants lack sufficient information and
 24 belief to either admit or deny the allegations contained within this paragraph, and based
 25 upon said lack of information and belief, deny the allegations contained therein.

26 42. In response to Paragraph 42, Defendants lack sufficient information and
 27 belief to either admit or deny the allegations contained within this paragraph, and based
 28 upon said lack of information and belief, deny the allegations contained therein.

1 43. In response to Paragraph 43, Defendants lack sufficient information and
 2 belief to either admit or deny the allegations contained within this paragraph, and based
 3 upon said lack of information and belief, deny the allegations contained therein.

4 44. In response to Paragraph 44, Defendants lack sufficient information and
 5 belief to either admit or deny the allegations contained within this paragraph, and based
 6 upon said lack of information and belief, deny the allegations contained therein.

7 45. In response to Paragraph 45, Defendants admit that there are certain specific
 8 prohibitions against discrimination in the United States Code. Defendants deny the
 9 allegations contained within Paragraph 45, starting on page 16, lines 6 through 9.

10 46. In response to Paragraph 46, Defendants deny the allegations contained
 11 within this paragraph.

12 47. In response to Paragraph 47, Defendants deny the allegations contained
 13 within this paragraph.

14 48. In response to Paragraph 48, Defendants deny the allegations contained
 15 within this paragraph.

16 49. In response to Paragraph 49, Defendants deny the allegations contained
 17 within this paragraph.

18 50. In response to Paragraph 50, Defendants deny the allegations contained
 19 within this paragraph.

20 51. In response to Paragraph 51, Defendants lack sufficient information and
 21 belief to either admit or deny the allegations contained within this paragraph, and based
 22 upon said lack of information and belief, deny the allegations contained therein.

23 52. In response to Paragraph 52, Defendants replead and incorporate by
 24 reference, as if fully set forth again herein, the responses contained in Paragraphs 1
 25 through 51 of this answer.

26 53. In response to Paragraph 53, Defendants lack sufficient information and
 27 belief to either admit or deny the allegations contained within this paragraph, and based
 28 upon said lack of information and belief, deny the allegations contained therein.

1 54. In response to Paragraph 54, Defendants lack sufficient information and
 2 belief to either admit or deny the allegations contained within this paragraph, and based
 3 upon said lack of information and belief, deny the allegations contained therein.

4 55. In response to Paragraph 55, Defendants lack sufficient information and
 5 belief to either admit or deny the allegations contained within this paragraph, and based
 6 upon said lack of information and belief, deny the allegations contained therein.

7 56. In response to Paragraph 56, Defendants deny the allegations contained
 8 within this paragraph.

9 57. In response to Paragraph 57, Defendants deny the allegations contained
 10 within this paragraph.

11 58. In response to Paragraph 58, Defendants deny the allegations contained
 12 within this paragraph.

13 59. In response to Paragraph 59, Defendants deny the allegations contained
 14 within this paragraph.

15 60. In response to Paragraph 60, Defendants deny the allegations contained
 16 within this paragraph.

17 61. In response to Paragraph 61, Defendants deny the allegations contained
 18 within this paragraph.

19 62. In response to Paragraph 62, this responding Defendant repleads and
 20 incorporates by reference, as if fully set forth again herein, the responses contained in
 21 Paragraphs 1 through 61 of this answer.

22 63. In response to Paragraph 63, Defendants lack sufficient information and
 23 belief to either admit or deny the allegations contained within this paragraph, and based
 24 upon said lack of information and belief, deny the allegations contained therein.

25 64. In response to Paragraph 64, Defendants lack sufficient information and
 26 belief to either admit or deny the allegations contained within this paragraph, and based
 27 upon said lack of information and belief, deny the allegations contained therein.

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1 65. In response to Paragraph 65, Defendants lack sufficient information and
 2 belief to either admit or deny the allegations contained within this paragraph, and based
 3 upon said lack of information and belief, deny the allegations contained therein.

4 66. In response to Paragraph 66, Defendants lack sufficient information and
 5 belief to either admit or deny the allegations contained within this paragraph, and based
 6 upon said lack of information and belief, deny the allegations contained therein.

7 67. In response to Paragraph 67, Defendants deny the allegations contained
 8 within this paragraph.

9 68. In response to Paragraph 68, Defendants deny the allegations contained
 10 within this paragraph.

11 69. In response to Paragraph 69, Defendants lack sufficient information and
 12 belief to either admit or deny the allegations contained within this paragraph, and based
 13 upon said lack of information and belief, deny the allegations contained therein.

14 70. In response to Paragraph 70, this responding Defendant repleads and
 15 incorporates by reference, as if fully set forth again herein, the responses contained in
 16 Paragraphs 1 through 69 of this answer.

17 71. In response to Paragraph 71, Defendants deny the allegations contained
 18 within this paragraph.

19 72. In response to Paragraph 72, Defendants deny the allegations contained
 20 within this paragraph.

21 73. In response to Paragraph 73, Defendants deny the allegations contained
 22 within this paragraph.

23 74. In response to Paragraph 74, Defendants deny the allegations contained
 24 within this paragraph.

25 75. In response to Paragraph 75, Defendants deny the allegations contained
 26 within this paragraph.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

76. Plaintiffs' Complaint fails to state a claim against Defendants upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

7 77. The Complaint on file herein, and each purported claim for relief stated
8 therein, is barred by the applicable statutes of limitation of the State of California,
9 including but not limited to California *Code of Civil Procedure* Sections 338 and 340, and
10 California Business and Professions Code Section 17208.

THIRD AFFIRMATIVE DEFENSE

12 78. Plaintiffs have failed to mitigate their damages and injuries, if any, and such
13 failure to mitigate their proximately caused the alleged damages and injuries, if any.

FOURTH AFFIRMATIVE DEFENSE

15 79. Plaintiffs, in connection with any and all of the transactions or allegations
16 which are the subject of their Complaint on file herein, have not suffered and will not
17 suffer any damages by reason of the alleged acts or omissions of Defendants, and therefore
18 Plaintiffs have no valid claims against Defendants.

FIFTH AFFIRMATIVE DEFENSE

20 80. All events, happenings, injuries, and damages referred to in Plaintiffs'
21 Complaint on file herein, were proximately caused by the negligence and/or fault of
22 plaintiffs and/or other firms, persons, corporations, or entities other than Defendants, or
23 over whom Defendants exercised no jurisdiction or control, and for whose conduct
24 Defendants are not responsible or liable; therefore, if there is found to be any fault on the
25 part of Defendants which in any manner or degree contributed to Plaintiffs' alleged
26 injuries and damages, if any, a finding should be made apportioning and affixing the
27 comparative fault of any and all such persons or parties, whether named in this action or
28 otherwise.

SIXTH AFFIRMATIVE DEFENSE

2 81. The claims for relief alleged in Plaintiffs' Complaint on file herein are barred
3 by reason of the fact that Plaintiffs, upon being fully informed of the acts and events of
4 which they now complain, ratified and affirmed all conduct with respect to those acts and
5 events, and therefore, Plaintiffs have waived all such claims and are estopped from
6 asserting the same against Defendants.

SEVENTH AFFIRMATIVE DEFENSE

8 82. Plaintiffs are barred from recovery herein by reason of the fact that Plaintiffs
9 voluntarily and knowingly entered into and engaged in the transactions and conduct
10 alleged in the Complaint on file herein and voluntarily and knowingly assumed all risk
11 relating to said transactions and conduct at the times and places mentioned in the
12 Complaint on file herein and prior thereto.

EIGHTH AFFIRMATIVE DEFENSE

14 83. Defendants allege, upon information and belief, that any act or omission on
15 their part made the basis of any purported claim, was excused as it would have
16 fundamentally altered the nature of the services offered at 1924 Irving Street, San
17 Francisco, California.

NINTH AFFIRMATIVE DEFENSE

19 84. Defendants allege, upon information and belief, that any act or omission on
20 their part made the basis of any purported claim, was excused as the removal of the
21 barriers described herein, if any, was not readily achievable.

TENTH AFFIRMATIVE DEFENSE

23 85. Defendants allege, upon information and belief, that any act or omission on
24 their part made a basis of any purported claim, was excused as a result of structural
25 impracticability.

ELEVENTH AFFIRMATIVE DEFENSE

27 86. Defendants allege, on information and belief, that some or all of Plaintiffs'
28 claims may be barred, in whole or in part, by the doctrines of *laches*, waiver, estoppel,

1 unclean hands, or other equitable doctrines.

2 **TWELFTH AFFIRMATIVE DEFENSE**

3 87. Plaintiffs are barred from recovery by reason that, at all times indicated in
 4 the Complaint on file herein, Defendants provided reasonable accommodations to
 5 handicapped individuals and exercised due diligence in their acts and activities.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

7 88. Defendants allege, upon information and belief, that given the work
 8 requested by Plaintiffs, Defendants' conduct was excused as a result of the undue burden
 9 of constructing the requested work at 1924 Irving Street, San Francisco, California.

10 **FOURTEENTH AFFIRMATIVE DEFENSE**

11 89. Defendants allege, upon information and belief, that the Complaint on file
 12 herein is improperly pled, in that it is more properly brought as a class action lawsuit, not
 13 as an individual action.

14 **FIFTEENTH AFFIRMATIVE DEFENSE**

15 90. Defendants allege, upon information and belief, that Plaintiffs are not the
 16 proper representatives to represent the interests of the general public or those of the
 17 disabled public.

18 **SIXTEENTH AFFIRMATIVE DEFENSE**

19 91. Plaintiffs are barred from recovery by reason of the fact that they improperly
 20 seek monetary damages and are seeking fluid fund recovery in violation of the law.

21 **SEVENTEENTH AFFIRMATIVE DEFENSE**

22 92. Plaintiffs are barred from recovery of attorneys' fees as they are not a proper
 23 form of relief in this action as Plaintiffs are not acting in the interests of, or on behalf of,
 24 any public interest group.

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1 **WHEREFORE**, Defendants request that the Court enter a judgment:
2 a) Dismissing Plaintiffs' Complaint against Defendants with prejudice;
3 b) Declaring that Defendants have no obligation to perform additional work at
4 1924 Irving Street, San Francisco, California;
5 c) Awarding Defendants their attorneys' fees, costs and disbursements; and
6 awarding such other and further relief to Defendants as the Court deems just,
7 equitable and proper.

8 Dated: July 6, 2009

HAIGHT BROWN & BONESTEEL LLP

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10 By: Nairi Chakalian

11 Nairi Chakalian
12 Attorneys for Defendants

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2 **DEMAND FOR JURY TRIAL**
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4 Defendants Bart Y. Lau, Trustee; Jindart Lau, Trustee; Benjamin C.K. Lau, Trustee;
5 Francis T.H. Lau, Trustee; Joanne M.H. Lau, Trustee; Gary T.Y. Lau, Trustee; Linda C.
6 Lau, Trustee; Lawrence Y.K. Lau, Trustee; Amy L. Ko Lau, Trustee; Sabina W.M.,
7 Trustee of The Sabina Wai Mai Lau Revocable Trust Dated demand trial by jury.

8 Dated: July 6, 2009

9 HAIGHT BROWN & BONESTEEL LLP

10 By: Nairi Chakalian

11 David W. Evans
12 Nairi Chakalian
13 Attorneys for Defendants

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